IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 1120 of 1991
Date of Decision:22.8.2007

Ram Bilash .....Petitioner

Versus

Inder Chand ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Sanjay Mittal, Advocate, for the petitioner.

Shri Jaswant Jain, Advocate, for the respondent.

HEMANT GUPTA, J.

The challenge in the present petition is to the order passed by the authorities below, whereby the petition seeking eviction of the respondent on the ground that the premises has become unfit and unsafe for human habitation, was dismissed.

It is the case of the petitioner that the premises in dispute was let out on 15.1.1958 on a monthly rent of Rs.41/-. But the respondent has broken the floor and Chabutara of the demised premises. It is also pleaded that the premises is 100 years old and cracks have appeared in the walls of the demised shop and eastern wall of the shop in question can fall at any time. The tenant denied such averments and pointed out that the value and utility of the shop in question has not been materially impaired and the cracks have not appeared in the walls of demised shop. It was denied that the shop in question can fall at any time.

It has been found by the learned Appellate

Authority that PW4-Manmohan Singh has not deposed regarding the condition of the floor of the shop. He has not deposed that the Chabutara was broken by the tenant as alleged in the eviction petition. On the other hand PW5 Padam Chand has deposed that the floor and the Chabutara of the shop are in damaged condition but he has not deposed that the same have been broken by the tenant. From the testimony of the landlord, it was found that it cannot be said that the floor and Chabutara of the shop have been damaged by the tenant. It has been further found that the statement of PW5-Padam Chand regarding cracks on walls seems to be overjealous statement. Thus, it was found that the shop in dispute cannot be said to be unsafe and unfit for human habitation. It was found that the demised premises consists of four khan and a Chabutara and one of the Khans is said to be in dilapidated condition but this fact is not sufficient to hold that the entire building or substantial portion thereof is in damaged condition. Thus, the order passed by the learned Rent Controller was maintained.

In the present petition, learned counsel for the petitioner has vehemently argued that an application for appointment of the Local Commissioner was not decided by the learned Rent Controller, which has prejudiced the case of the petitioner. Earlier the petitioner has sought the assistance of the expert to examine the building but the tenant has not permitted the expert to be examined. However, such is the stand taken by the petitioner in the application for appointment of the Local Commissioner. When the tenant has appeared as a witness, no such question was asked from the tenant that he has resisted the examination of the building by the expert. Therefore, the stand of the petitioner that the expert was not permitted to be examined is not believable.

Finding recorded by the Courts below are sought to be disputed by way of reappreciation of evidence. The findings recorded are possible findings on the basis of evidence on record. It has been rightly found that there is no evidence of damage by the acts of the tenant and that even otherwise one Khan alone can be said to be in dilapidated condition, which is a small portion. Therefore, the tenant cannot be ordered to be evicted from the larger portion of the building.

I do do not find any patent illegality or irregularity in such findings, which may warrant interference by this Court, in exercise of its revisional jurisdiction.

22-08-2007 (HEMANT GUPTA)
ds JUDGE